

Rule 26: Sentencing

Response to Motion for Presentence Incarceration Credit

A defendant who was in DOC custody for a different crime while prosecution for the current offense was being pursued is not entitled to presentence incarceration credit for his DOC time against the sentence imposed for the current offense.

The State asks this Court to deny the defendant's motion for presentence incarceration credit against the sentence to be imposed for the offense in this cause number, for the following reasons.

Briefly, the facts are that this defendant failed to appear for his arraignment for this offense and a bench warrant was issued for his arrest. Because he had initially given authorities a false name, it took two years to discover his true identity. When the authorities discovered the defendant's true identity, he was in the custody of the Arizona Department of Corrections, serving a sentence for a different crime.

The defendant has now been convicted in this cause number and awaits sentencing. He asks this Court to grant him credit for the time he spent in DOC while this case was pending against the eventual sentence to be imposed in this cause number.

The defendant is not entitled to such credit against the sentence to be imposed for *this* offense because he was not in DOC custody for *this* offense. A.R.S. § 13-709(B) provides:

B. All time actually spent in custody *pursuant to an offense* until the prisoner is sentenced to imprisonment *for such offense* shall be credited against the term of imprisonment otherwise provided for by this chapter.

[Emphasis added.] This subsection's text has remained unchanged since the 1978 criminal code revisions. This subsection applies to a defendant who has spent time in

custody for a criminal offense while awaiting the conclusion of his prosecution *for that offense*. For example, a defendant could be in custody for an offense that was not bondable, or he could fail to post bond. After the defendant is convicted of *that offense*, the total time spent in custody *for that offense* is “presentence incarceration time.” This time is credited to the defendant and applied against the sentence he receives *for that offense*.

When a Court pronounces sentencing for an offense, Rule 26.10(b)(2), Ariz. R. Crim. P., requires the court to “[s]tate that it has considered the time the defendant has spent in custody *on the present charge*, and subsection (b)(4) requires the court to “[s]pecify the commencement date for the term of imprisonment and a computation of time to be credited against the sentence as required by law.” *See generally State v. San Miguel*, 132 Ariz. 57, 59-60, 643 P.2d 1027-28 (App. 1982), for a historical overview of the issue.

When a court pronounces the sentence for an offense, Rule 26.10(b)(2), Ariz. R. Crim. P., requires the court to “[s]tate that it has considered the time the defendant has spent in custody *on the present charge*,” and subsection (b)(4) requires the sentencing court to “[s]pecify the commencement date for the term of imprisonment and a computation of time to be credited against the sentence as required by law.”

The language of § 13-709(B) and Rule 26.10(b) make it clear that presentence incarceration credit is offense-specific – that is, if a defendant is being held in custody for offense A, he is entitled to presentence incarceration credit for that time *only* as against the sentence imposed for offense A. The credit applies only to the sentence for the particular crime for which he is in presentencing custody. For example, a defendant

could remain in custody for an offense that was not bondable, or he could remain in custody because he did not post bond. When the defendant is eventually sentenced for *that offense*, the total time spent in custody *for that offense* is “presentence incarceration time” *as to that offense*. This time is credited to the defendant and applied against the sentence he receives *for that offense*.

Because the defendant here was not in DOC custody for *this* offense, he is not entitled to credit for that time against the sentence to be imposed for *this* offense. Therefore, the State asks this Court to deny the defendant’s motion.